

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 14 D.o.E. App. Dec. 319)

**In re Justin & Ryan Kuhlman, and
Kylie, Brittany, & Korey Bothwell** :

Julie Kuhlman & Angie
Bothwell, Appellants :

v. :

DECISION

East Monona Community
School District,
Appellee. :

[Admin. Doc. #3890 & #3891]

The above-captioned matter was heard telephonically on July 22, 1997, before a hearing panel comprising Mr. Milt Wilson, Bureau of Administration, Instruction, & School Improvement; Ms. Teresa McCune, Office of Educational Services for Children, Families & Communities; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mrs. Julie Kuhlman and Mrs. Angie Bothwell, were present telephonically and were unrepresented by counsel. The Appellee, East Monona Community School District [hereinafter, “the District”], was present telephonically in the persons of Mr. Paul Tedesco, Superintendent, and Ms. Kathryn Holverson, Board Secretary, and was represented by Mr. D.R. Franck.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code sections 282.18 and 290.1(1997). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on May 12, 1997, which denied their requests for open enrollment for their children.

I. FINDINGS OF FACT

The Appellants and their children live in Moorhead, Iowa, which is in the East Monona Community School District. The Appellants are sisters. During the 1997-98 school year, Justin Kuhlman will be in fifth grade, Ryan Kuhlman will be in the third grade, Kylie Bothwell will be in fifth grade, Brittany Bothwell will be in fourth grade, and Korey Bothwell will be in second grade.

During the 1996-97 school year, the principal of the East Monona school was Mr. Milt Peters. Mr. Peters no longer works for the District, and was not present at the hearing.

The Appellants filed applications for open enrollment for their children after the January 1st deadline. Mrs. Kuhlman filed her applications on May 5, 1997, and would like her children to attend school in the West Harrison-Mondamin School District. Mrs. Bothwell filed her applications on May 12, 1997, and she would like her children to attend school in the West Monona School District. The Appellants would like their children to exit the East Monona District beginning in the 1997-98 school year for a number of reasons. These reasons are concerns about academics and extra-curricular activities in the East Monona District, and concerns related to the whole grade sharing agreement entered into between the high schools in the East Monona District and the Boyer Valley District in August 1996. Mrs. Bothwell and Mrs. Kuhlman spoke with their children's teachers, and Mrs. Bothwell spoke with Mr. Peters regarding problems with their children's academic performance, but felt that their questions were not addressed satisfactorily and were resented.

In July 1996, the District held a public meeting on the proposed whole grade sharing agreement. Mrs. Bothwell attended the meeting, although she did not remember doing so at the hearing. Open enrollment deadlines were discussed at the meeting.

In November 1996, the District adopted Open Enrollment Policies 501.6a and 501.6b, which provide that parents requesting open enrollment must file their forms by January 1st. The policies were updated to conform to the statutory change in the deadline from October 30 to January 1st. Neither appellant knew of the District's adoption of the policies. Board Policy 501.6a states that the superintendent will notify parents of open enrollment decisions by mail within three days of the Board's action to approve or deny the open enrollment request.

Because of their concerns, Mrs. Kuhlman and Mrs. Bothwell decided to open enroll their children. Their decisions to open enroll were made in December of 1996. In December, 1996, Mrs. Bothwell called the principal, Mr. Peters, at his office, and asked him the deadline for open enrollment applications. Mrs. Bothwell testified she called

Mr. Peters because she felt he was knowledgeable, and she wanted to go directly to the source of correct information. Mr. Peters told her the deadline was June 1st. Within a couple of days of this conversation, Mrs. Bothwell told her sister Mrs. Kuhlman, that Mr. Peters had told her the application deadline was June 1st. Mrs. Bothwell picked up the forms, but decided to delay turning them in because she wanted to avoid confrontation with the District. Both appellants thought they had plenty of time to turn in the applications because they relied on Mr. Peters' statement.

In February of 1997, Mrs. Bothwell was told by a friend that the deadline for open enrollment applications was January 1, 1997. Mrs. Bothwell again called Mr. Peters to ask him if this was correct. Mr. Peters told her that the deadline was January 1st, but that they were making exceptions to the rules because of what was happening with the school district (i.e. the change in sending ninth graders in the District to another school). Because she was trying to save face and prevent animosity, Mrs. Bothwell decided to wait until the end of the school year to turn in her application, again in reliance on Mr. Peters' statement. Mrs. Kuhlman made the same decision.

The appellants are upset because they felt they were misled regarding the deadline, and were given incorrect information twice by Mr. Peters.

At the Board meeting on March 10, 1997, the Board discussed the financial and planning burden open enrollment has on the District. Mr. Tedesco, the Superintendent, and the Board are very concerned about the financial burden placed on the District by students open enrolling out of the District. It also makes staffing and planning more difficult, particularly when class sizes fluctuate late in the year. Therefore, at the March 10 Board meeting, the Board voted to reaffirm its position not to allow any late-filed open enrollment requests which did not have good cause for the late filing. Mr. Tedesco was directed to publish notice of the deadlines in the T-Hawk newsletter, which he did on the front page of the March 1997 newsletter. The minutes of the Board meeting were published in the county newspaper.

In prior years, the District has granted late-filed open enrollment applications. Because of the financial burden on the District from open enrollment, the Board felt it could no longer make exceptions.

The District publishes a newsletter, the T-Hawk Tribune, which it sends to everyone with a mailbox in the District. Mrs. Kuhlman and Mrs. Bothwell each have a mailbox in the District. The District publishes the deadline for open enrollment applications each year in the newsletter. Most recently, the open enrollment deadlines were published in the newsletter in August 1996 and March 1997. Both Appellants testified they do not have time to read the newsletter and did not see the publication of open enrollment dates in the newsletters.

It is not customary for the District to notify parents who have items before the Board of the Board meeting.

On May 5, 1997, Mrs. Kuhlman turned in her applications for open enrollment. At the same time, she gave Mr. Peters a note which asked him to tell her when the Board meeting would be held at which the Board would discuss her applications. Mr. Peters did not tell Mrs. Kuhlman of the May 12 Board meeting, nor that her application would be discussed at that meeting. He also did not tell Superintendent Tedesco Mrs. Kuhlman had asked to be so informed. As he was preparing for the Board meeting on the evening of May 12, Mr. Tedesco found Mrs. Kuhlman's note in the file. He called her, but she was not home. He then left her a message (at 6:30 p.m.) telling her the meeting was that evening at 7:30 p.m., and that if she did not attend, the Board would put off discussing the matter until the next meeting. Mrs. Kuhlman was at her son's soccer game, and did not come home until 9:30 p.m., so she did not attend the meeting.

Mrs. Bothwell turned in her applications on May 12, 1997. She did attend the Board meeting that evening, and spoke to the Board about her applications. She told the Board Mr. Peters had told her the deadline was June 1st. Superintendent Tedesco did not know of this conversation until the May 12 Board meeting. Mr. Peters was at the Board meeting. At the meeting, Mr. Peters agreed he had spoken with Mrs. Bothwell and told her the date was June 1st. Mr. Tedesco testified Mr. Peters said he was talking with reference to kindergarten students, and that his recollection was the conversation occurred downtown¹. Neither of the Appellants has a kindergarten student. Superintendent Tedesco also testified it is possible Mr. Peters confused the dates.

Superintendent Tedesco told the Board he had left a message for Mrs. Kuhlman that her application would not be acted on if she were not present. Mrs. Bothwell then said to go ahead and act, because the Board was going to deny the application anyway. The Board then proceeded to act on the applications, and denied them on the ground they were filed after the deadline.

The District does not send notice of Board actions to the parents with cases before the Board, and they did not send notice to Mrs. Kuhlman. The way Mrs. Kuhlman found out the Board had denied her applications was in a conversation with her sister, Mrs. Bothwell. She is upset that the Board did not notify her of their decision. The District did not follow its own Policy 501.6a, which states that the superintendent will notify parents of open enrollment decisions within three days of the Board's action.

¹ We note that the application deadline for kindergarten students is June 30th, not June 1st. 281 IAC 17.3(2).

Mrs. Kuhlman and Mrs. Bothwell each filed an affidavit of appeal with the Department of Education on June 9, 1997. On June 13, 1997, the District sent Mrs. Kuhlman a letter, in which it offered her an opportunity to address the Board and said the Board would reconsider the decision made in her absence. By that time, Mrs. Kuhlman decided to proceed with her appeal and not take the Board up on its offer.

II. CONCLUSIONS OF LAW

The open enrollment law was written to allow parents to maximize educational opportunities for their children. Iowa Code Section 282.18(1)(1997). However, in order to take advantage of the opportunity, the law requires that parents follow certain minimal requirements, including filing the application for open enrollment by January 1st of the preceding school year. Iowa Code section 282.18(2)(1997).

At the time the open enrollment law was written, the legislature recognized that certain events would prevent a parent from meeting the January 1st deadline. Therefore, there is an exception in the statute for two groups of late filers: the parents or guardians of children who will enroll in kindergarten the next year, and parents or guardians of children who have "good cause" for missing the January 1st filing deadline. Iowa Code sections 282.18(2), (4), and (16)(1997); 281 IAC 17.4.

The Legislature has defined the term "good cause" rather than leaving it up to parents or school boards to determine. The statutory definition of "good cause" addresses two types of situations that must occur after the January 1st deadline and before June 30th. That provision states that "good cause" means

a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, or a similar set of circumstances consistent with the definition of good cause; a change in the status of a child's resident district, such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement, or the rejection of a current whole-grade sharing agreement, or reorganization plan, or a similar set of circumstances consistent with the definition of good cause. If the good cause relates to a change in status of a child's

school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

Iowa Code §282.18(16)(1997).

Although the State Board of Education has rulemaking authority under the open enrollment law, the rules do not expand the types of events that constitute "good cause". 281 IAC 17.4.

The Appellants testified they did not read the newsletters with the deadline published in them. They also did not see the publication of the minutes of the March Board meeting in the newspaper. In and of itself, this does not constitute good cause for their late filing under the statute and rules. *In re Nathan Vermeer*, 14 D.o.E. App. Dec. 83 (1997). The District sent a newsletter with the open enrollment deadlines to everyone with a mailbox in the District in August of 1996. The departmental rule at 281 IAC 17.3(2) requires that notice of the deadlines be given to all parents by September 30th. The District complied with the requirement of the rule. The fact that the Appellants did not see the newsletter or know its contents does not mean the District did not comply with the law. The District is merely required to send the notice, not to ensure that parents will read it.

The concerns regarding academics, extracurricular activities, and the whole grade sharing agreement for high school also are not good cause for the late filing as that term is defined by the legislature and State Board rules and case law. There have been many appeals brought to the Iowa Department of Education regarding the definition of "good cause" since the enactment of the open enrollment law. Only a few of those cases have merited reversal of the local board's decision to deny the applications. The State Board has refused to reverse a late application due to ignorance of the filing deadline, *In re Candy Sue Crane*, 8 D.o.E. App. Dec. 198 (1990); or when a parent became dissatisfied with a child's teachers, *In re Anthony Schultz*, 9 D.o.E. App. Dec. 381(1992); or because the school was perceived as having a "bad atmosphere", *In re Ben Tiller*, 10 D.o.E. App. Dec. 18(1993). As Mr. Franck pointed out, the Department recently refused to reverse a denial of open enrollment for a parent who had not received notice of the deadline and did not know it existed. *In re Nathan Vermeer*, 14 D.o.E. App. Dec. 83(1997).

In this case, as in the others, we are not being critical of the Appellants' reasons for wanting open enrollment. However, these reasons do not meet the "good cause" definition contained in the Iowa Code. Nor do they constitute a "similar set of circumstances consistent with the definition of good cause". Iowa Code section 282.18(16)(1997).

However, in this case, we have a set of facts which are very troubling to the panel. Mrs. Bothwell called the principal of her children's school, Mr. Peters, to ask for the deadline. This is not a case of ignorance of the deadline as in *Vermeer* or *Crane*. This is a case of misinformation given by a school principal, the head of administration for the building. We agree with the appellants that it was reasonable for them to go to Mr. Peters to ask for this information. They had a right to rely on the information he gave them, particularly when they asked not once but twice, and particularly when in the second conversation, Mr. Peters told them exceptions would be granted even though the deadline was January 1st. We also note that the Board's practice in prior years had been to allow late-filed applications regardless of the deadline, and it was in the period of transition to the new policy of no late applications that Mr. Peters misinformed Mrs. Bothwell. We are also very concerned that no one notified Mrs. Kuhlman of the meeting in spite of her written request to do so, and that the Board acted on her application in her absence, in spite of her request and the fact that Mr. Tedesco told her in the telephone message that action would be postponed if she were not present. It was not reasonable for the Board to rely on the statement by Mrs. Kuhlman's sister to go ahead. Mrs. Bothwell was not representing Mrs. Kuhlman and had no authority to state her position. We are also concerned that the District did not follow its own policy which required written notification within three days, and did not notify Mrs. Kuhlman of the decision made by the Board until after she had already filed her affidavit of appeal to this department.

As troubling as these facts are, we do not believe they fit within the definition of good cause under the statute and our rules. Iowa Code 282.18(16)(1997); 281 IAC 17.4. Therefore, we hold that the Appellants did not have good cause for their late-filed applications as defined by the law. However, the legislature enacted the following law: "Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children." Iowa Code 282.18(18)(1997). The State Board has stated that it views subsection (18) as an award of extraordinary power to be used sparingly. *In re Crysta Fournier*, 13 D.o.E. App. Dec. 106(1996); *In re Paul Farmer*, 10 D.o.E. App. Dec. 299(1993). It has also said that when "a child's unique situation cries out for state board intervention, this discretionary power is ripe to be exercised. [citation omitted] It is for situations the general assembly was unable to envision, not unwilling to include." *Farmer, supra at 302*.

This case is one which cries out for the Board to exercise its discretion. It is just and equitable to allow these parents to open enroll their children when they turned in their applications by the deadline told to them by their principal. We would not make the same decision if a parent had relied on a statement by a teacher or secretary. We would also not make the same decision if the subject had been one other than that within the direct knowledge of a principal. However, the principal of a school is the head of

administration for that building. He or she should be expected to know the correct open enrollment deadlines, and whether or not the local Board grants exceptions. Parents have a right to expect that when they ask the principal of their school the deadline for open enrollment, they will receive the correct information. They also have a right to expect that if they call their principal a second time, and the principal tells them exceptions will be granted to the open enrollment deadline, that that is correct information. These parents reasonably relied on the statements made by the principal. Their late filing was the direct result of his misinformation given to them twice. It compounded the problem when the Board made the decision in the Kuhlman case without Mrs. Kuhlman's presence, and did not notify her of the decision contrary to Board policy. It would be unjust to deny the Appellants' requests for open enrollment under these circumstances.

All motions or objections not previously ruled upon are hereby denied and overruled.

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the East Monona Community School District made on May 12, 1997, which denied Mrs. Kuhlman's and Mrs. Bothwell's late-filed requests for open enrollment for their children, is hereby recommended for reversal. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION